

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AARON D. SEYMOUR,

Plaintiff,

v.

DOE 1, et al.,

Defendants.

Case No.: 1:22-cv-01146-SKO

**SECOND INFORMATIONAL ORDER—
NOTICE AND WARNING OF
REQUIREMENTS FOR OPPOSING
DEFENDANT’S SUMMARY JUDGMENT
MOTION**

(Doc. 40)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Aaron D. Seymour is appearing pro se and *in forma pauperis* in this civil rights action.

I. RELEVANT BACKGROUND

On September 2, 2025, Defendant Medina filed a Motion for Summary Judgment addressing the merits of Plaintiff’s claim. (Doc. 40.) Although more than 21 days have passed, Plaintiff has not filed an opposition or statement of non-opposition to the summary judgment motion. *See* Local Rule 230(l).

On October 6, 2025, this matter was reassigned from Magistrate Judge Gary S. Austin to the undersigned for all further proceedings. (Doc. 41.)

On October 7, 2025, Defendant filed a Notice of Plaintiff’s Failure to Oppose Defendant’s Motion for Summary Judgment, Submitted in Lieu of Reply Papers, and Request for Dismissal

1 with Prejudice. (Doc. 42.)

2 A review of the docket for this action after the recent reassignment reveals Plaintiff did
3 not receive the required *Rand* warning.

4 **II. DISCUSSION**

5 Although Defendant's notice accompanying the pending motion references "the *Rand*
6 notice" (Doc. 40 at 2), such a notice was not included.¹ Because Defendant's motion is not
7 accompanied by a *Rand* warning, pursuant to *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012),
8 *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), and *Klinge v. Eikenberry*, 849 F.2d 409 (9th
9 Cir. 1988), the Court hereby notifies Plaintiff of the following rights and requirements for
10 opposing the motion:

11 1. Unless otherwise ordered, all motions for summary judgment are briefed pursuant
12 to Local Rule 230(l).

13 2. Plaintiff is required to file an opposition or a statement of non-opposition to
14 Defendant's motion for summary judgment. Local Rule 230(l). If Plaintiff fails to file an
15 opposition or a statement of non-opposition to the motion, this action may be dismissed, with
16 prejudice, for failure to prosecute. The opposition or statement of non-opposition must be filed
17 not more than 21 days after the date of service of the motion. *Id.*

18 3. A motion for summary judgment is a request for judgment on some or all of
19 Plaintiff's claims in favor of Defendant without trial. Fed. R. Civ. P. 56(a). Defendant's motion
20 sets forth the facts which Defendant contends are not reasonably subject to dispute and that entitle
21 Defendant to judgment as a matter of law. Fed. R. Civ. P. 56(c). This is called the Statement of
22 Undisputed Facts. Local Rule 260(a).

23 4. Plaintiff has the right to oppose a motion for summary judgment. To oppose the
24 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth in
25 Defendant's motion but argue that Defendant is not entitled to judgment as a matter of law.

26 5. In the alternative, if Plaintiff does not agree with the facts set forth in Defendant's

27 ¹ Nor does the accompanying Certificate of Service indicate Plaintiff was served with a *Rand* warning.
28 (See Doc. 40 at 15.)

1 motion, he may show that Defendant's facts are disputed in one or more of the following ways:

2 (1) Plaintiff may rely upon statements made under the penalty of perjury in the complaint or the
3 opposition if (a) the complaint or opposition shows that Plaintiff has personal knowledge of the
4 matters stated and (b) Plaintiff calls to the Court's attention those parts of the complaint or
5 opposition upon which Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth
6 the facts which Plaintiff believes prove his claims; (3) Plaintiff may rely upon written records but
7 Plaintiff must prove that the records are what he claims they are; or (4) Plaintiff may rely upon all
8 or any part of the transcript of one or more depositions, answers to interrogatories, or admissions
9 obtained in this proceeding. Should Plaintiff fail to contradict Defendant's motion with
10 declarations or other evidence, Defendant's evidence will be taken as truth, and final judgment
11 may be entered without a full trial. Fed. R. Civ. P. 56(e).

12 6. In opposing Defendant's motion for summary judgment, Local Rule 260(b)
13 requires Plaintiff to reproduce Defendant's itemized facts in the Statement of Undisputed Facts
14 and admit those facts which are undisputed and deny those which are disputed. If Plaintiff
15 disputes (denies) a fact, Plaintiff must cite to the evidence used to support that denial (e.g.,
16 pleading, declaration, deposition, interrogatory answer, admission, or other document). Local
17 Rule 260(b).

18 7. If discovery has not yet been opened or if discovery is still open and Plaintiff is
19 not yet able to present facts to justify the opposition to the motion, the Court will consider a
20 request to postpone consideration of Defendant's motion. Fed. R. Civ. P. 56(d). Any request to
21 postpone consideration of Defendant's motion for summary judgment must include the following:
22 (1) a declaration setting forth the specific facts Plaintiff hopes to elicit from further discovery, (2)
23 a showing that the facts exist, and (3) a showing that the facts are essential to opposing the motion
24 for summary judgment. *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th Cir. 2009);
25 *Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006); *California v.*
26 *Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motion for summary
27 judgment must identify what information is sought and how it would preclude summary
28 judgment. *Blough*, 574 F.3d at 1091 n.5; *Tatum*, 441 F.3d at 1100-01; *Margolis v. Ryan*, 140

1 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

2 8. Unsigned declarations will be stricken, and declarations not signed under penalty
3 of perjury have no evidentiary value.

4 9. The failure of any party to comply with this order, the Federal Rules of Civil
5 Procedure, or the Local Rules of the Eastern District of California may result in the imposition of
6 sanctions including but not limited to dismissal of the action or entry of default.

7 **III. DEADLINE TO FILE OPPOSITION**

8 Considering Plaintiff's pro se status and Defendant's failure to properly file and/or serve a
9 *Rand* warning with the motion for summary judgment, the Court will extend the deadline for
10 Plaintiff to file any opposition to Defendant's motion for summary judgment.

11 **IV. CONCLUSION AND ORDER**

12 Accordingly, the Court **HEREBY ORDERS:**

- 13 1. **Within twenty-one (21) days** from the date of service of this order, Plaintiff **SHALL**
14 file an opposition or statement of non-opposition to Defendant's motion for summary
15 judgment, in compliance with Rule 56 of the Federal Rules of Civil Procedure and
16 Local Rule 260; and
- 17 2. Plaintiff is advised that any request for an extension of time of the deadline for
18 complying with this order must be filed on or before the 21-day deadline expires and
19 must be supported by good cause.

20 **WARNING: Plaintiff is advised that a failure to comply with this order may result in**
21 **the dismissal of this action.**

22 IT IS SO ORDERED.

23 Dated: **October 10, 2025**

24 */s/ Sheila K. Oberto*
25 UNITED STATES MAGISTRATE JUDGE
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